

## STIPULATION

It is stipulated and agreed by and between the above-named parties, through their attorneys of record, whose appearances have been hereinabove noted, that the deposition of James G. Abourezk may be taken at this time and place, that is, at the offices of Johnson, Heidepriem, Miner, Marlow & Janklow, Sioux Falls, South Dakota, on the 18th day of January, 2005, commencing at the hour of 3:00 o'clock p.m.; said deposition taken before Jill M. Connelly, Notary Public within and for the State of South Dakota; said deposition taken for the purpose of discovery or for use at trial or for each of said purposes, and said deposition is taken in accordance with the applicable Rules of Civil Procedure as if taken pursuant to written notice.

JAMES ABOUREZK,

called as a witness, being first duly sworn, testified as follows:

EXAMINATION BY MR. PARSONS:

Q. Would you state your name, please?

A. James Abourezk.

Q. Senator Abourezk, is it okay if I call you Jim?

1 A. Well, I was angered, outraged, surprised.

2 Q. And tell me why.

3 A. I guess it's not my place to ask questions, but  
4 I would just ask you, how would you feel if  
5 somebody called you a traitor of the United  
6 States? That's the real answer.

7 Q. Did you understand the website to be asserting  
8 that you had committed treason against the  
9 United States Government?

10 A. Well, I understood the website to have called  
11 me a traitor to the United States Government,  
12 yes, the United States. That's what I  
13 understood.

14 Q. When you saw the website, did you believe that  
15 all of the people listed on the Traitor List  
16 were being labeled as traitors to the United  
17 States?

18 A. I understood that, yes.

19 Q. Did you believe it was true that they were?

20 A. I didn't believe any of them were traitors, to  
21 my knowledge.

22 Q. Did you construe any political commentary in  
23 the website? I mean did you view it all as  
24 political commentary?

25 A. Well, I viewed some of it as political

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1 A. That's better, yes.

2 Q. Why don't you tell me how you first became  
3 aware of the ProBush.com website.

4 A. I think somebody out in New England sent me an  
5 e-mail, somebody I knew out there. I'm trying  
6 to remember exactly who it was. I think it was  
7 a guy from New Hampshire who told me about it,  
8 but my memory is not that good on exactly who  
9 told me.

10 Q. Did you then personally go and look at the  
11 website?

12 A. I did.

13 Q. Tell me if you recall what you saw.

14 A. Well, I saw a list and photographs of people  
15 who were defined as traitors to the United  
16 States.

17 Q. Did you see your own name on there?

18 A. I did.

19 Q. Did you see the names of other celebrities?

20 A. When you say "other celebrities," you're  
21 assuming I'm one?

22 Q. Or public figures or prominent people.

23 A. Yes, I did.

24 Q. What was your reaction to the website when you  
25 saw it?

1 commentary, some of it as hawking products,  
2 like Bush dolls or some things like that.

3 Q. What about the Traitor List itself? Did you  
4 consider that at all to be a political  
5 statement by the website?

6 A. I considered it to be an allegation, a charge  
7 that I was a traitor to the United States.  
8 That's what I considered it to be.

9 Q. When you went on the website, did you see the  
10 disclaimer?

11 A. I did not. Only much later when I checked it  
12 again, much later.

13 Q. Do you remember when it was that you first saw  
14 the website time wise?

15 A. I can't give you the exact time. I think it  
16 was April of whatever year it was. What year  
17 was that? Do you remember?

18 Q. 2002.

19 A. Yes.

20 Q. I think that's right. In I think late April of  
21 2002 your attorney, Mr. Epp, wrote some letters  
22 to ProBush.com, I think an e-mail, and maybe a  
23 letter in May, that referred to the  
24 disclaimer. So would it be fair to say that  
25 you had at least seen the disclaimer by that

1 in an attorney-client situation, and we have  
 2 made an objection that it's attorney-client  
 3 privileged communication. So you can keep  
 4 asking. He'll give you the same answer. Or we  
 5 can move on and discuss how we want to handle  
 6 these objections following the deposition.

7 Q. Exhibit 2 is your affidavit?

8 A. Yes.

9 Q. Paragraph 3, and this is your signed  
 0 statement.

1 A. Yes.

2 Q. Paragraph 3 says, "I have never been accused  
 3 of, charged with, or convicted of the crime of  
 4 treason by any state or by the United States of  
 5 America." That's true?

6 A. Yes.

7 Q. Obviously. Do you believe that ProBush.com has  
 8 accused you, charged you with, or convicted you  
 9 of the crime of treason?

10 A. They've charged me with being a traitor, which  
 11 is a crime of treason, yes.

12 Q. The next one is your attorney's Affidavit. It  
 13 states, Paragraph 3, "On or about April 22,  
 14 2003, I became aware of the ProBush.com website  
 15 from my client, James G. Abourezk." That would

1 issues?

2 A. I'm an activist on a lot of issues, some  
 3 important, some not.

4 Q. You've never been one to shy away from  
 5 publicity?

6 A. I'm very modest sometimes. Sometimes I'm not.

7 Q. At least you've never been afraid to give your  
 8 opinion when you think it's important.

9 A. That's true, yes.

10 Q. Would you agree you kind of have a place in  
 11 society where you have a bully pulpit that not  
 12 everyone, not every average American may have?

13 A. I don't know. I can't really answer that yes  
 14 or no.

15 Q. Let's take a look at the website here. Exhibit  
 16 4 is what I believe what you would see, at  
 17 least as of the date this was printed, the  
 18 opening page of the website.

19 When you saw it, did you see this page or  
 20 something like it, or did you go straight to  
 21 the Traitor List? Did you click through some  
 22 things, or do you remember?

23 A. You know, I really don't recall to answer  
 24 that. I eventually got to the Traitor List,  
 25 but I don't know what I did before that.

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1 be approximately when you discovered the  
 2 website, or would that refresh your  
 3 recollection as to that?

4 A. I believe I discovered it before this date, but  
 5 then I discussed it with my attorney at some  
 6 point after. I don't know if this is a correct  
 7 date or not.

8 Q. It states that, "Senator Abourezk as well as a  
 9 number of other prominent Americans were listed  
 10 on the site's Traitor List." Would you agree  
 11 you are a prominent American?

12 A. Well, I don't think that's for me to say.

13 Q. That's a judgment for other people.

14 Q. Do you have any opinion on whether or not  
 15 you're a prominent American?

16 A. I don't.

17 Q. Do you dispute that you are a public figure?

18 A. Well --

9 MR. EPP: Objection, calls for a legal  
 10 conclusion.

11 A. I neither admit or dispute it. That's a legal  
 12 conclusion I can't make.

13 Q. Do you believe you're famous?

14 A. I don't think I'm famous, no.

15 Q. Do you believe you are an activist on important

1 MR. EPP: Ron, in asserting this, this is  
 2 what you believe Senator Abourezk saw the first  
 3 time he viewed the site?

4 MR. PARSON: No.

5 MR. EPP: The date stamp, at least when  
 6 this was printed out, apparently is June 27,  
 7 2003, and there's a mention on the first page  
 8 to donate to ProBush.com's legal battle.  
 9 Apparently part of it's concerning James  
 10 Abourezk. So this would come sometime, I'm  
 11 assuming sometime after the first publication  
 12 of the website?

13 MR. PARSON: That's correct, yes. Not  
 14 asserting that this is definitely and obviously  
 15 not exactly what was there when he first saw  
 16 it, although some of this is kind of permanent  
 17 content that may have been very similar in  
 18 structure.

19 Q. The next one is what's called the Patriot  
 20 List.

21 A. Is that No. 5?

22 Q. No. 5, Exhibit 5. Do you remember looking  
 23 through this?

24 A. You know, I don't remember seeing this ever. I  
 25 see Bill O'Reilly and Ann Coulter on it and

the Middle East in the center of this entire important issue. Is that a fair statement?

A. Well, I'm not a kid. I'm 73 years old.

Q. But grew up in South Dakota.

A. I did.

Q. Meaning it's impressive that -- what I'm trying to establish is you are having a major affect on world events from South Dakota.

A. Well, I don't know how to answer that.

Q. Would you agree that you had an affect on world events?

A. Well, if, indeed, it was my work that got the Iraqis to let the weapons inspectors in, which did absolutely no good, anyhow, I guess but that's what happened. That's all I can say about it.

Q. It depends on one's point of view whether it did any good, I guess.

A. It didn't do any good. It didn't prevent the invasion.

Q. It didn't prevent the invasion. What did they tell you about weapons of mass destruction when you were there?

A. Said they didn't have any. I guess he was right, too.

Middle East?

A. Yes.

Q. Do you speak with them regularly?

A. Not regularly.

Q. I've been to your office. I don't know if you remember, when I was in law school I did some legal research for you.

A. You did some research for me, yes.

Q. So I've been to your office, and I remember all the photographs on the wall, you with all the important leaders.

A. Including Mohammed Ali.

Q. Mohammed Ali was the good one, the best one. I know you're not going to answer the question of whether or not you are a public figure, but is it safe to say that you are someone who rubs elbows with some of the most important figures of our time?

A. I don't think that's safe to say, no.

Q. You would disagree with that?

A. Well, yeah. Whether people I meet with are important or not, I don't know. That's open to discussion.

Q. Did you view the ProBush.com website calling you a traitor or putting you on the Traitor

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Q. Who went with you to Iraq? I saw Congressman Rahall.

A. Yes.

Q. He was a sitting Congressman?

A. From West Virginia, yes.

Q. Who else?

A. Warren Strobel from Knight-Ridder.

Q. Journalist?

A. He was a journalist. There were several journalists. There was somebody from National Public Radio. I can't remember the guy's name. Let's see, Norman Solomon from the Institute for Public Accuracy.

Q. I think I read something about him.

A. There are probably a couple others, but I can't remember.

Q. Where else? Did you just go to Baghdad? Did you go to other governments?

A. We stopped in Damascus both ways.

Q. What did you do there?

A. I can't remember if I met with the President of Syria or not. I can't remember that now. I've met with him a number of times. It's possible I did.

Q. Is it true you know many of the leaders in the

List as impugning your patriotism?

A. Oh, yes.

Q. Is it a crime to impugn somebody's patriotism?

A. If you call them a traitor, if you accuse them of a crime, yes, that's wrong. I was accused of a crime.

Q. I'm looking at Exhibit 9, the second page. Is this an article you authored?

A. Yes.

Q. I'm sorry, the third page.

A. There's nothing in the third page.

Q. No, second page. I'm sorry. The last paragraph says, "The question of patriotism should not be aimed at those who oppose the aggressive devastation of a small Third World country, but at those in the Bush administration who seem to delight in the prospect of the annihilation of innocent Iraqi civilians."

Are you impugning the patriotism of people in the Bush administration?

A. No, I'm not actually. I'm impugning their motives, which I think are very bad motives.

Incidentally, I said, "Their plan will devastate our own economy." I guess I was

James G. Abourezk

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1 A. Oh, yes.

1 Q. So couldn't you figuratively call him a  
2 traitor?

1 A. But he wasn't a traitor to his country.

1 Q. Not to his country, but couldn't you  
2 figuratively call him a traitor for doing that?

1 A. But not to his country. The answer is no. My  
2 answer is no to that question.

1 Q. Do you believe that your criticism of the  
2 administration regarding its Iraq policy and  
1 ProBush.com's statements on its websites to  
2 criticize you, do you believe they affect  
3 matters of public concern and policy?

4 A. I don't know. I don't know the answer to  
5 that. It's not for me to say.

6 Q. Have you visited any doctors or mental health  
7 professionals to deal with any problems caused  
8 by these statements on the ProBush.com website?

9 A. I won't answer that question.

10 Q. I'm entitled to know that. Are you claiming  
1 any type of emotional, physical injury?

2 A. Don't need to talk about damages.

3 Q. I'm entitled to get into damages, if you're  
4 claiming damages.

5 A. I'm refusing to answer.

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1 MR. PARSON: If I can ask your attorney.  
2 Are you claiming? I haven't seen it in your  
3 Complaint. My assumption is you're not  
4 claiming any physical, emotional injuries  
5 resulting from this.

5 MR. EPP: We have not put Senator  
7 Abourezk's mental state into issue, mental  
3 condition, if you will.

9 MR. PARSON: Or emotional injury. True?

10 THE WITNESS: Not required to.

11 MR. EPP: Not required to. It's up to a  
2 jury to determine.

12 MR. PARSON: Just verifying, though, that  
4 your claim is based on a libel per se claim and  
5 not emotional, physical damages.

6 MR. EPP: I guess I answered that we have  
7 not disclosed a medical expert at this time or  
8 counseling expert.

9 Q. Do you have any documentary evidence, I'm just  
10 asking, that demonstrates the statements in the  
1 ProBush.com website are factually false as  
2 opposed to merely being opinions or insults?

13 A. I don't have an answer to that question.

14 Q. You're not aware of any documentary evidence?

15 A. I don't have an answer to that question.

1 MR. EPP: Let me clarify. What kind of  
2 things are you talking about?

3 Q. I'm assuming, I don't know what there would  
4 be. I mean do you have any evidence -- do you  
5 have any documents of any kind, and I don't  
6 know what they would be, that demonstrate that  
7 his statements on the ProBush.com website are  
8 factual falsities rather than just mere insults  
9 or opinion?

10 A. I'll answer that part. I didn't understand  
11 your question at first. Calling me a traitor  
12 is factually false.

13 Q. Do you have any documents or -- I understand no  
14 one -- I want to make this clear. No one is  
15 contending that you are a legal traitor to the  
16 United States Government or have committed any  
17 crime whatsoever. That's our position.

18 But do you have any documents, and I'm  
19 guessing you don't but I'm wondering, that  
20 demonstrate that what's on the ProBush.com  
21 website is factually false as opposed to being  
22 merely an insult?

23 A. Well, I would say there's an absence of  
24 documents proving the truth of their  
25 statement. I'm not, never been accused of

1 being a traitor formally. I've never been  
2 charged with it, never been tried or  
3 convicted.

4 Q. Did you ever, prior to seeing this website, did  
5 you have any idea who the Marino brothers were?

6 A. No.

7 Q. Absolutely no conversations with them?

8 A. No.

9 Q. Do you know anything about them at all, other  
10 than what you read in this lawsuit?

11 A. No.

12 Q. Do you know why you were placed on the website?

13 A. I don't know.

14 Q. Do you know whether or not they knew who you  
15 were when you were placed on the website?

16 A. I don't know. I assume they must have known or  
17 wouldn't have put my name on there. That's an  
18 assumption. That's all I can say.

19 MR. PARSON: I think I'm entitled to know  
20 what your damages calculations are, if any. If  
21 it's -- a libel per se is a calculation of  
22 damage. That's what your Complaint states, and  
23 if that's what it is, then I accept that and I  
24 don't need to go any further. But if you are  
25 claiming individualized damages, I'm entitled